

# **BOARD OF RIGHTS MANUAL**

TWELFTH EDITION

**RULES AND PROCEDURES GOVERNING THE  
CONDUCT OF BOARD OF RIGHTS HEARINGS  
UNDER LOS ANGELES CHARTER § 1070**

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## FOREWORD

Discipline has been defined as instruction or training which corrects, molds, strengthens, or perfects. It is education directed toward the development of competent police officers--police officers who wish to conform to the prescribed and desirable patterns of conduct and who are capable of performing their sworn duties. Proper discipline stimulates harmony and consistency within an organization and facilitates the coordination of effort. It is lubrication for the machinery of departmental organization.

In order to maintain proper discipline, a police supervisor must often deal directly with difficult personnel problems. Some supervisors are reluctant to actually contend with such situations, and such unwillingness tends to create a situation of general decadence of organizational discipline. These supervisors tend to avoid the issues because of their strong desire for the personal approval of their subordinates. John M. Pfiffner has said, "The real malady lies in the fact that most people are afraid of other people, not afraid in the sense that one is apprehensive of physical jeopardy or loss of property, but afraid of the disapproval of one's own fellows."<sup>1</sup> It requires courage for supervisors to meet personnel problems face to face, but police supervisors must learn to take this action to prevent functional disruption.

A strong fraternal feeling is usually found among police officers, particularly within any given department. Some police officers will jeopardize their own positions to protect a fellow officer. One of the principal reasons some police officers believe that they must "stick together at any cost" is the opinion that the public is generally opposed to them personally. This protective belief is shared by some supervisors as well as the rank and file police officers. These over-protective feelings must be eliminated as the loyalty of police supervisors and officers must be to the force as a whole. "An officer's primary concern must be what is best for all policemen, and certainly it is not to the group's advantage to let derelictions go uncorrected, for the entire force is judged by the actions of the few non-conformists."<sup>2</sup>

When it becomes evident that disciplinary action is necessary, it should be taken promptly because the discipline of the entire department is endangered if problem cases are avoided or ignored. Penalties for infractions need not necessarily be severe, but actions should be prompt, consistent, and certain. "It is not the severity of the punishment that restrains men, but the certainty of it."<sup>3</sup>

Discipline is not solely the task of any one individual or small group, but must be considered the responsibility of all supervisors and officers of the Department. Officers must know that they will receive encouragement and approval for acting correctly, and just criticism and penalties for acting wrongly. Such a healthy disciplinary system will stimulate adherence to those rules which have been found to be best suited to protect the interest and welfare of the group. Bruce Smith has said, "A sound discipline will probably contribute more to the solution of our municipal police problems than any other single recourse now available."<sup>4</sup>

If positive discipline breaks down, it becomes necessary to resort to negative discipline. Negative discipline, designed to rehabilitate and re-educate or, in serious cases, to remove, is essential when it has

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<sup>1</sup>John M. Pfiffner, *Study Guide for Human Relations in Management* (University Book Store, mimeographer. University of Southern California) 1948, p. 162

<sup>2</sup>G. Douglas Gourley, "Police Discipline," *Journal of Criminal Law and Criminology*. 41(1):(May-June, 1950).

<sup>3</sup>Loc.Cit.

<sup>4</sup>Bruce Smith, *Police Systems in the United States*, Harper Brothers, N.Y. 1940, p. 171

been definitely determined that an officer has acted contrary to instruction and training. When a Board of Rights is empaneled, it must ascertain whether or not there is a preponderance of the evidence to substantiate the charge or charges assigned as cause for the order of relief from duty, suspension or demotion. After all the evidence has been adduced, it is the Board's duty to make a finding of either guilty or not guilty as to each specific charge presented against the accused officer. If the alleged violations are not proved by a preponderance of the evidence presented, the officer should promptly be cleared of the charges.

In the event that a finding of guilty is made, penalties permitted by Charter section 1070 must be imposed. The nature and extent of the penalty should be commensurate with the particular conduct of which the accused has been found guilty.

## INTRODUCTION

This Manual has been designed as a guide for Board of Rights members in conducting hearings. It is intended as a supplement to the material contained in Los Angeles City Charter section 1070 as an outline of the accepted procedure to be followed.

It is to be noted, however, that Charter section 1070 governs the suspension, demotion, and removal of police officers and that nothing contained in this Manual should be construed in a manner which is contrary to the expressed language of this section.

The proceedings of a Board of Rights hearing involves administrative law, not criminal or civil law, and it is necessary for Board members to realize that the underlying philosophy of administrative law prevails throughout these hearings. Administrative Tribunals were initiated as fact-finding bodies to appraise all of the information accumulated concerning a given situation and to reach an equitable decision, without undue interference from restrictive legal minutiae. Since these Boards are permitted to function free from certain procedural limitations of courts of law, they have won wide acclaim for their successful and purposeful operation. William A. Robson has said, "I am convinced that Administrative Tribunals have accomplished, and are accomplishing, ends which are beyond the competence of our courts of law as at present constituted. Furthermore, those ends seem to me socially desirable ones which compare favorably with the selfish individual claims based on absolute legal rights to which the formal courts are so often compelled to lend ear."<sup>1</sup> It should be clearly understood by Board Members that it is the duty of Administrative Tribunals to seek facts and determine the truth, but not to become entangled in a web of technicalities which would defeat the purpose for which the Board was created. The conception that "the regulators should have a large amount of flexibility in arriving at their opinions"<sup>2</sup> is an accepted fact of administrative law.

The Board in its functioning shall be guided as far as is practicable by the generally accepted fundamental rules of order usually customary in the governing and conducting of committees and boards, and a hearing shall be conducted with freedom from unnecessary and unreasonable delay. The procedure is characterized by informality, freedom from arbitrary decisions, lack of equivocation, and the privilege to function without exactness and regularity. John M. Pfiffner, in describing the operation of such boards, has said: "The proceedings before an Administrative Tribunal are very informal. While attorneys may be present, there is relatively little quibbling over the competency of witnesses or the admissibility of evidence. Witnesses conduct themselves in a casual and conversational manner and are frequently permitted to tell their story without the intervention of questions."<sup>3</sup>

It shall be the purpose of the hearing to ascertain the truth. The members of the Board shall protect the rights of the complainant, accused, or witnesses who display a lack of ability, experience, or thorough understanding of the proceedings. The fact that the law has provided for a Board of Rights not composed of lawyers is sufficient proof that they shall not be expected to know or attempt to follow the strict rules of evidence. The protection afforded an accused officer under section 1070 of the Charter does not imply that the officer should be shielded from any iniquitous acts. The procedure outlined in the Charter section

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<sup>1</sup>William A. Robson, **Justice and Administrative Law**, MacMillan and Co., London, 1928, p. 324

<sup>2</sup>John M. Pfiffner, **Public Administration**. Ronald Press Co., New York, 1948, p.452.

<sup>3</sup>*Ibid.*, p. 453

is designed as a safeguard for police officers against political interference and pressure, personal prejudice, intimidation, and false accusation.

This section was never intended to protect inefficiency, misconduct, or insubordination.

The keynote of the Board of Rights hearings is "administrative justice." It shall be the duty of the members of the Board to vigorously pursue the true facts of the matter being heard and to return a finding and penalty commensurate with the evidence developed and presented. This is the avowed obligation of the Board to the Department and the public. Department members are afforded the protection of being able to properly perform their sworn duties without fear of reprisal, but it would be intensely detrimental to the general public and the Department if an officer were allowed to act discredibly under the cloak of such protection. Therefore, Board Members should at all times be aware of the welfare of the Department and the public when evaluating the action of those officers who have been accused of misconduct.

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## 100 - BOARD OF RIGHTS MEMBERS

**100 CONTENT OF CHAPTER.** This chapter describes the duties of the Board of Rights members, the Department Advocate, the accused and the Executive Assistant of the Police Commission.

**120 CHAIRPERSON OF BOARD.**

**120.20 SELECTION.** The senior sworn member of the Board by rank and/or seniority in rank shall be designated as Chairperson unless at least two of the members decide otherwise.

**120.40 SEATING ARRANGEMENT.** The Chairperson shall be seated at the center or head of the table with a member on each side.

**120.60 REQUEST FOR CITY ATTORNEY.** Upon the request of any two Board members, the Chairperson shall request the City Attorney or some duly authorized deputy to advise the Board on legal matters during any session of the hearing.<sup>1</sup> The City Attorney or the deputy need not be physically present at such hearing but may offer advice to the Board either telephonically or through other communication.

City Attorney advice to the Board shall be given only in closed session with all Board members present. However, the explanation of the issues and factual background may, in the discretion of the Board, be given to the City Attorney or deputy in open session by the Board and/or the parties. The City Attorney or the deputy advising the Board shall not be the attorney advising the Department Advocate in the same matter.

**120.80 DUTIES OF CHAIRPERSON.** The following duties shall be performed by the Chairperson of the Board:

- **Preparedness.** Ascertains if the hearing is ready to proceed.
- **Oaths.** Administers the oaths to the reporter and witnesses. For the oaths to be administered see Sections 208.50 and 216.75 of this Manual.
- **Rights of Accused.** Reads the rights to the accused. For the rights to be read see Section 212.60 of this Manual.
- **Plea of Accused.** Directs the accused to enter a formal plea of guilty or not guilty to each specific charge.
- **Control of Hearing.** Controls the conduct of the hearing and may expel any disorderly persons. With the concurrence of a majority of the Board, may remove and bar the return of persons from the hearing who interfere with the control of the hearing. This includes defense and Department representatives who, after having been warned, obstruct the conduct of the hearing. “Obstruct” does not mean merely to cause delay due to motions,

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<sup>1</sup>Charter §1070(k)



objections, or legal arguments, but means to block or prevent the continuing progress of the hearing.

- **Recording.** Determines that certain stages of the proceedings are recorded, as required. Directs that pertinent information, i.e., who is present, time, etc., be included in the record.
- **Motions and Objections.** Rules on all motions, objections, and/or other circumstances requiring a decision by the Board. Consults with the other Board members on rulings unless the decision is obvious. The Board need not rule on a motion immediately, but may take the motion under submission and rule at a later time during the hearing.
- **Character Witnesses.** Upon a finding of guilty, advises the accused of the right to call character witnesses or present other evidence of good character prior to deliberation on penalty. See Section 266.20 of this Manual.
- **Deliberations.** Clears the hearing room of all persons except Board members during the deliberations on the finding and penalty.
- **Personnel File.** Requests the Department Advocate to produce the departmental personal history and record of accused AFTER a finding of guilty.
- **Findings and Penalty.** Informs the accused of the findings and recommended penalty.

## **140 BOARD MEMBERS.**

**140.25 PRESENCE.** All Board members must be present during the actual hearing while testimony is given. For discussion of continuances, see Section 336 of this Manual.

**140.50 RIGHTS.** All Board members have equal rights regarding voting, questioning of witnesses, and other such matters.

**140.75 DUTIES OF BOARD MEMBERS.** The following duties shall be performed by members of the Board of Rights:

- **City Attorney.** Confer with the Chairperson on requesting the City Attorney or some duly authorized deputy to advise the Board.
- **Subpoenas.** Once a Board of Rights has been selected, a member of the Board shall approve any request to the City Clerk for the issuance of subpoenas to witnesses and/or for the production of documents. The responsibility for requesting the City Clerk to issue subpoenas to witnesses, excluding defense rebuttal witnesses, and/or for the production of documents is delegated to the Advocate by Order of the Chief of Police. (See Sections 180.60 (Subpoenas) and 190.60 (Subpoena List) of this Manual.)

Motions related to any subpoena issued by the Board shall be heard by the Board. Motions related to any subpoena issued prior to selection of the Board by the Police Commission shall be heard by the Police Commission.<sup>2</sup>

- **Rulings.** Confer with the Chairperson regarding rulings.
- **Closed Hearings and Sealed Transcripts.** Make decisions on requests for closed hearings and/or sealed transcripts or exhibits. (See Section 204.30.)
- **Determine Truth.** Vigorously pursue and determine the exact truth of the matter under consideration.
- **Develop Facts.** It is the Board's duty to ensure development of all pertinent facts. If it appears that the case of either the accused or the Department is incomplete through inability, inexperience, ignorance, or inadequate investigation, it shall be the duty of the Board to question witnesses, subpoena additional witnesses, request additional investigation, or perform whatever functions necessary to determine the true facts. The duty of Board members to develop the facts does not include the right to ex parte contact with parties, witnesses, or evidence. (See Section 308.)
- **Finding.** Deliberate and vote on the finding. Prepare rationale.
- **Penalty.** Deliberate and vote on the recommended penalty. Prepare rationale.
- **Sign Finding and Recommended Penalty.** All members, regardless of their individual decisions, must sign the finding and recommended penalty, if any, which have been recorded on the appropriate form.

## **142 SELECTION OF SWORN BOARD MEMBERS.**

**142.20 INITIAL SELECTION OF SWORN BOARD MEMBERS.** Sworn Board members shall be selected pursuant to Charter Sections 1070(h) and (I). The accused officer shall select two of the four names within the applicable time period as specified in Charter Section 1070(f).

**142.40 SELECTION OF SWORN BOARD MEMBERS IF ACCUSED FAILS TO SELECT NAMES.** In the event the accused officer makes written application for a Board of Rights hearing and fails to draw four names of potential sworn Board members pursuant to Charter Section 1070(h), the Chief of Police shall draw two names from the box to sit on the Board. In the event that the accused officer makes written application for a Board of Rights hearing and draws the names of four potential sworn Board members pursuant to Charter Section 1070(h), but fails to select two of the four names drawn pursuant to Charter Section 1070(h), the Chief of Police shall draw two of the four names previously drawn by the accused from a box containing the four names.

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<sup>2</sup> See Charter §1070(j).

**145 AVAILABILITY OF BOARD MEMBERS.** The Advocate must be able to immediately verify the status of each potential sworn Board member whose name is drawn. The accused or his representative may be present when contact is made with such potential members. It is the responsibility of all staff and command officers eligible to serve on Boards of Rights to insure that a member of their staff has access to their schedules at all times. If a staff or command officer's schedule cannot be verified at the time of the selection for a Board, that officer will be considered available. Any conflict in schedules as a result of such circumstances shall be resolved by the Chief of Staff and may result in the cancellation of other activities in favor of the Board hearing.

**160 DISQUALIFICATION OF BOARD MEMBERS.** Except those specified in the Los Angeles City Charter,<sup>4</sup> Section 170.10 and 170.20 of this Manual and elsewhere in this section as disqualified from serving as Board of Rights members, all sworn officers of the ranks of Captain and above are to be considered as "qualified" and shall be subject to selection by the accused officer unless eliminated on the ground of prejudice or who have a conflict of interests.

**160.50 PREJUDICE; CONFLICT OF INTEREST.** Persons who, through actual contact with the case, have become prejudiced may be disqualified at any time during the proceeding, but this does not include everyone who may have formed an opinion. On a Departmental Board there is no actual "freedom from opinion" as Department members are presumed to know the accused. Persons who have a conflict of interests may be disqualified at any time during the proceeding.<sup>5</sup>

Disputes regarding the exclusion of Board members for prejudice or conflict of interest prior to selection which cannot be resolved by the Commanding Officer, Professional Standards Bureau, may be submitted to the Chief of Staff or in his/her absence, the first available Assistant Chief for final resolution. Any documents relating to that claim of prejudice or conflict of interests shall be retained in the Box File. Removal of a sworn Board member for prejudice or conflict of interest after selection shall be governed by Section 165 of this Manual.

Each Board member shall disclose to all parties in open session on the record any and all prejudice or conflicts of interest involving other Board members, the parties, and/or the parties' representative(s) as soon as the Board member knows of the conflict or prejudice.

**165 REMOVAL OF SWORN MEMBER.**

**165.10 REQUEST FOR REPLACEMENT OF SWORN BOARD MEMBER.** The accused, Advocate, or other Board member may request a sworn member to remove him or herself from serving on the Board for prejudice or conflict of interest. Any documents which pertain to the request shall be retained in the Box File.

**165.20 APPEAL REGARDING REPLACEMENT.** If there is objection by any Board member, the Department Advocate, or the accused concerning whether a Board member shall

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<sup>4</sup> See Charter §1070(h).

<sup>5</sup> See Charter §1070(h).

be removed, the matter shall be immediately appealed to the Chief of Staff or in his/her absence, the first available Assistant Chief. That person shall determine whether the hearing shall proceed without removal of the member or whether the member shall be replaced.

**165.30 REPLACEMENT SELECTION PROCESS.** If the sworn member is to be replaced, the accused shall draw one card. The accused shall select as the replacement either the person whose card was just drawn or one of the names declined in the original Board selection. Should the accused fail to select the new sworn member within ten days of being notified that a sworn Board member has been removed, the Chief of Police shall select the new member by drawing one name from the box within five days after the ten-day period has elapsed.

**170 EXEMPTIONS OF BOARD MEMBERS.** Boards of Rights are considered primary duty assignments. The following are considered exemptions of a staff or command officer from participating as a member of a Board of Rights.

**170.10 EXEMPTIONS BY POSITION.** The following staff and command officers are exempt from participating as Board members when assigned to specific positions responsible for the review or appeal of disciplinary cases or are exempt by Charter Section 1070(h). These positions are:

Chief of Police;  
Any Deputy Chief II (Assistant Chief);  
Chief of Staff;  
Commanding Officer, Risk Management Group  
Commanding Officer, Professional Standards Bureau  
Commanding Officer, Internal Affairs Group;  
Captains assigned within Internal Affairs Group;  
Ombuds Officer; and  
Employee Relations Administrator.

With the approval of the Chief of Police, positions may be included or excluded from the above based on responsibility for review and/or approval of investigations and activities related thereto. When the Advocate is notified that a candidate Board member is exempted, the Advocate will promptly notify the representative unions of the exemption.

**170.20 EXEMPTIONS BY DUTY STATUS.** Based on duty status the following potential members are considered exempt:

Sick/IOD status (including restricted duty not compatible with participating in a Board hearing); Vacation status; Previously approved absence from command; Member of a different Board of Rights scheduled for the same date(s); or Conflict with a primary duty assignment which has significant importance to Department operations.

**175 DUTIES OF THE EXECUTIVE DIRECTOR OF THE POLICE COMMISSION.** The Executive Director of the Police Commission shall maintain a box containing the names of all potential civilian Board members and shall assist in the selection of a civilian member.

**176 SELECTION OF CIVILIAN BOARD MEMBER.<sup>6</sup>**

**176.20 CREATION OF THE LIST OF THREE (3) MEMBERS.** The Executive Assistant or designee shall draw names of potential civilian Board members by lot, 1, 2, 3, 4, 5, etc. and then contact each person in the order drawn until there are three (3) civilians available for the date of the Board. Each of the three (3) potential civilian members must not be prejudiced or a material witness to the facts constituting the charges.

**176.30 THE STRIKING PROCEDURE.** The list of three (3) names shall be presented to the Department Advocate within one (1) day of the request for a civilian member. The accused and the Advocate shall, within one (1) day of receipt of the list of three (3) names, at a time designated by the Executive Assistant or designee, each strike one name, with the order of striking to be by coin toss administered by the Executive Assistant or designee. The second party to strike may strike from the names remaining after the first party strikes. The remaining name shall be appointed as the civilian member of the Board.

**176.40 THE STRIKING PROCEDURE IF ONLY ONE PARTY PARTICIPATES.** If one party refuses or fails to participate in the striking procedure, the other party may strike one name from the list of three (3) names. The Executive Assistant or designee shall select the civilian member from one of the two (2) remaining names.

**176.50 THE STRIKING PROCEDURE IF NEITHER PARTY PARTICIPATES.** If both parties refuse or fail to participate in the striking procedure, the Executive Assistant or designee shall select the civilian member from the list of three (3) names.

**176.60 NOTIFICATION TO CIVILIAN BOARD MEMBERS.** Upon selection of the civilian Board member, the Executive Assistant shall notify the three potential civilian members whether or not they were selected as a Board member.

**177 REPLACEMENT OF CIVILIAN BOARD MEMBER.** When it is necessary to replace a civilian Board member, the entire procedure outlined in Section 176 of this Manual shall be followed.

**180 DEPARTMENT ADVOCATE.** The Department Advocate represents the Chief of Police and presents the Department's case against the accused to Boards of Rights.

**180.30 RELATIONSHIP TO BOARD.** The Department Advocate is not a member of the Board of Rights and does not vote or engage in deliberations. The Department Advocate assists the Board members by making arrangements for the hearing.

**180.60 DUTIES OF DEPARTMENT ADVOCATE.**

- **Preparation.** Prepares the case for the Department.
- **Charges.** Prepares the charges for the signature of the Chief of Police.

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<sup>6</sup> See Charter §1070(h) and Ordinance No. 170024 (Effective 10-28-94).

- **Service of Papers.** Serves, or causes to be served, the necessary papers upon the accused.
- **Rights.** Advises or causes the accused to be advised of his rights at the time of relief from duty.
- **Name Box.** Maintains the box containing the names of the eligible sworn Board members.
- **Selection of Board.** Is present at the time the accused selects the sworn Board members.
- **Request for List of Civilian Board Members.** Immediately after the accused makes written application for a Board of Rights hearing, notifies the Executive Assistant of the Police Commission of the need for a list of three (3) potential civilian Board members and of the date of the hearing.
- **Selection of Civilian Board Member.** Is presented with a list of three (3) names of potential civilian Board members by the Executive Assistant of the Police Commission. The Advocate shall participate in the selection process as set forth in Section 176 of this Manual.
- **Meeting of Board.** Determines the time of the initial meeting of the Board at the time of the selection of Board members. The initial meeting of the Board shall be held not less than ten (10) nor more than thirty (30) days after the accused officer selects the Board,<sup>7</sup> and may take place in person or by telephone. The Board is considered selected on the day the sworn members are selected. The day that the accused officer selects the Board is not counted in determining the time of the initial meeting.
- **Service of Papers on Board.** Serves, or causes to be served, the necessary papers upon the Board members.
- **Duration of Hearings.** Informs the Board members of the estimated number of days required for the Board to hear the case.
- **Subpoenas.** On behalf of the Board and excluding defense rebuttal witnesses, delivers the subpoenas for both the Department and the accused to the City Clerk for issuance in the name of the City and attachment of the corporate seal. (See Sections 140.75 and 190.60 (Subpoena List) of this Manual.)
- **Service of Subpoenas.** Except as otherwise noted in Section 190.60 of this Manual, serves or causes to be served the subpoenas on witnesses and/or for the production of documents. Subpoenas, including those for defense rebuttal witnesses pursuant to Section 190.60, shall be served and/or delivered only within the City of Los Angeles unless specific applicable laws permit service, delivery, and/or enforcement outside the City.
- **Logistical Support.** Provides all logistical support including a hearing room, hearing reporter, interpreter where necessary, and other support as required.

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<sup>7</sup> See Charter §1070(g).

**Exception:** The accused may, at his or her own expense, provide a court certified interpreter. Such interpreter shall be responsible for all interpretation for the record during the entire proceeding. The accused shall notify the Advocate of the intent to provide a court certified interpreter prior to the date of the hearing. Either side may have an additional interpreter present. However, only the interpreter designated for the Board shall provide interpretation for the record.

- **Procedural Provisions.** Examines the file to determine that the procedural provisions have been fulfilled.
- **Examination of Witnesses.** Conducts the direct examination of witnesses for the Department.
- **Cross-examination of Witnesses.** Cross-examines the accused and witnesses for the accused.
- **Evidence .** Presents the evidence, both in support of the charges by the Department and which may tend to disprove the charges or excuse the accused.
- **Arguments.** Presents arguments on behalf of the Department.
- **Summation.** Presents a summation of the Department's case.
- **Penalty Recommendation.** When a suspension is appealed to a Board of Rights and there is a finding of "guilty", provides the Board at the onset of the penalty phase with written documentation of the penalty prescribed by the Chief of Police and that recommended at each level of review during the adjudication of the investigation. When the penalty, as prescribed by the Chief of Police, is an increase or decrease based upon the addition or deletion of a charge(s), the Board shall be so informed by the Advocate.
- **Personnel File.** Makes available the departmental personnel history and records of the accused to the Board members AFTER a finding of guilty. The Board may consider the entire departmental history and record of the accused which shall include, among other things, information concerning personnel complaints against the accused that were sustained. The Board may also review Internal Affairs Group's prepared summaries of not resolved complaints against the accused. Upon the request of the accused or a member of the Board, the Board may review information derived from the personnel complaints against the accused that were not resolved.<sup>10</sup> However, the Board shall not review or consider any not resolved complaint more than five (5) years old.
- **Decision.** Reviews the decision of the Board for accuracy and presents the decision to the Chief of Police as soon as practicable, but in no event later than ten days after the decision of the Board of Rights.
- **Service of Finding.** Serves, or causes to be served, the necessary papers as a result of the finding of the Board.

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<sup>10</sup> See Charter §1070(o).

- **City Attorney.** Seeks the advice of an attorney from the City Attorney's Office on any and all legal matters as necessary. The attorney who advises the Advocate may not advise the Board of Rights in the same matter. The City Attorney may be present to advise and assist the Advocate during the hearing or may offer advice telephonically or through other communications.
- **Penalty Held in Abeyance.** Whenever a penalty is held in abeyance under section 278 of this Manual, the Advocate shall present documents and/or testimony regarding the efforts of the accused officer in completing the treatment and complying with the conditions of the rehabilitation agreement whenever the Board convenes for this purpose and prior to final deliberation on the recommended penalty.
- **Rationale on Findings and Penalty Rationale.** Notifies the defense representative when the rationales are available for the accused officer to sign. Insures that the accused officer, unless the officer is removed, personally signs the Rationale on Findings and Penalty Rationale. If the recommended penalty is removal or when an officer has waived the right to personally review and sign the rationales, the assigned defense representative may sign the rationales.

Should the Chief of Police reduce the penalty from removal to a suspension and/or demotion, the Advocate shall insure that the rationales are also signed by the accused officer if the officer has not waived the right to personally review and sign the rationales. (See Section 397 of this Manual.)

**190 DEFENSE REPRESENTATIVE.** The accused has the right to appear in person. The accused may be represented by counsel, or other representative(s), or both. Representation of the accused is not at the Department's expense.<sup>11</sup> The rights and duties of a defense representative shall apply to any person representing an accused officer for a Board of Rights, and, where applicable, to an accused appearing without representation.

#### **190.60 RIGHTS AND DUTIES OF DEFENSE REPRESENTATIVE**

- **Subpoena List.** Prepares a list of witnesses intended to be called, including character witnesses and excluding rebuttal witnesses. Delivers the subpoena list to the Department Advocate for preparation of subpoenas at least 10 days prior to the hearing. If the hearing has been set for 10 days after selection of the Board of Rights, the subpoena list must be presented to the Advocate at least five days before the hearing.<sup>12</sup> Prepares subpoenas for rebuttal witnesses, and submits subpoenas to a member of the Board for approval. Arranges for attestation by the City Clerk and then service of the subpoenas.

At the conclusion of the Board of Rights hearing, the accused is responsible for insuring that subpoenas for rebuttal witnesses served by the accused are submitted no later than 30 days following conclusion of the Board of Rights to the Advocate Section to be retained for

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<sup>11</sup> See Charter §1070(m).

<sup>12</sup> See Charter §1070(g), (r).



possible submission to any court or tribunal of competent jurisdiction. (See Sections 140.75 and 180.60 (Subpoenas) of this Manual.)

- **Selection of Board.** May assist the accused in the selection of members of the Board.
- **Meeting of the Board.** Advises the accused of the date and time of the meeting of the Board (after it has first met in session as designated).
- **Logistical Support.** Prior to the date of the hearing, advises the Advocate of the need for logistical support such as interpreters, audio or video equipment, speaker phones, or other support as required by the accused. When the accused provides the audio, video, or other equipment, it is not necessary to advise the Advocate.

**Exception:** The accused may, at his or her own expense, provide a court certified interpreter. Such interpreter shall be responsible for all interpretation for the record during the entire proceeding. The accused shall notify the Advocate of the intent to provide a court certified interpreter prior to the date of the hearing. Either side may have an additional interpreter present to assist it. However, only the interpreter designated for the Board shall provide interpretation for the record.

- **Representation at Hearing.** Conducts duties of representation in compliance with Chapters 2 and 3 of this Manual.

## **200 BOARD OF RIGHTS HEARING PROCEDURE**

**200 CONTENT OF CHAPTER.** This chapter describes the procedures to be followed by the Board of Rights in conducting a hearing.

## **204 PREPARATION.**

**204.30 OPEN HEARING/SEALED TRANSCRIPT OR EXHIBITS.** A Board of Rights shall be held as an open hearing unless the Department Advocate or the accused requests a closed hearing in which case the Board members shall rule on the request. The Board, with cause, may also close all or a portion of a hearing, or seal all or a portion of a reporter's transcript or the hearing exhibits on motion of any party, on its own motion, or as required by law. Should all or any portion of a hearing record be sealed, the accused and counsel for any party to that hearing shall, upon request, receive a copy of the sealed portion of the record as though no sealing had occurred; provided, however, that any portion sealed shall not be released or otherwise made public. This does not preclude any party from filing the sealed portion of a transcript with the court if submitted in a sealed condition.

**204.35 UNSEALING TRANSCRIPTS AND EXHIBITS .** The Department, or the accused may request the unsealing of all or a portion of any transcripts or exhibits of any prior Board of Rights and shall set forth good cause for such unsealing. The Board shall determine whether or not the transcript or exhibit shall be unsealed and may place limitations and other conditions on the use of such unsealed transcripts or exhibits. Upon conclusion of the Board, all unsealed transcripts or exhibits shall be resealed.

**204.60 READY TO PROCEED.** The Chairperson shall determine if the hearing is ready to proceed and shall ascertain if the witnesses are present and if the accused is present and prepared.

**208 OATH ADMINISTERED TO REPORTER.**

**208.25 ADMINISTERED BY CHAIRPERSON.** The oath is administered to the reporter by the Chairperson of the Board.

**208.50 REPORTER'S OATH.** The following oath shall be administered to the reporter:

- **Oath.** "Do you solemnly swear that you will fully and faithfully perform the duties of a reporter to the best of your ability to this Board of Rights?"

**208.75 PROCEEDINGS RECORDED.** The entire proceedings except the final arguments and deliberations, but including all audible portions of any audio or video tape played during a hearing, must be recorded by the hearing reporter. The reporter's record is the official record of the proceedings. Either party may separately audio record any portion of the proceedings, but any such recordings will not be included in the official record.

**210 REMOVAL OF CIVILIAN MEMBER.**

**210.25 REQUEST FOR REMOVAL.** A defense Representative, Advocate, or other Board member may request the civilian member to remove him or herself from serving on the Board for cause and must state legally sufficient cause therefor. Any documents pertaining to such request, or to any appeal or determination by the Police Commission, shall be retained in the Box File.

**210.50 APPEAL TO BOARD/CHIEF OF STAFF.** If the civilian member does not remove himself or herself, the matter may be immediately appealed to the Chief of Staff or his or her designee. That person shall determine whether the hearing should proceed or be continued for up to twenty-one (21) calendar days to permit the Police Commission to determine if the civilian member should be removed.

**210.75 DECISION BY THE POLICE COMMISSION.** If continued, the Police Commission shall determine if the civilian member is to be removed. If removed, a new civilian member shall be selected, as outlined in Section 176 of this Manual, and the hearing will then proceed.

**212 RIGHTS OF THE ACCUSED.<sup>15</sup>**

**212.30 RIGHTS READ BY CHAIRPERSON.** The rights of the accused shall be read by the Chairperson of the Board unless the reading is waived by the accused.

**212.60 RIGHTS OF ACCUSED.** The following statement of the rights of the accused shall be read to the accused:

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<sup>15</sup> See Charter §1070(m).

- **Rights of the Accused.** "You have a right to appear in person at a hearing and present a defense to the charges against you. You have a right to appear by representative at your own expense if you so desire. You may produce witnesses to testify in your behalf, including character witnesses, and may cross-examine witnesses testifying against you. You have the right to testify in your own defense. You have a right to be present when Board members examine your departmental personnel history and records. You also have a right to have all sworn testimony at the hearing reported and transcribed by a hearing reporter, and you shall be entitled to a complete copy thereof at your own expense, unless the Department has already ordered a copy."

**212.80 WAIVER OF SEPARATE DEFENSE REPRESENTATIVE.** During a joint hearing when a Defense Representative represents more than one accused officer, the Chairperson shall advise the accused officers so represented that this may result in a conflict of interest as to the case presented on their behalf. The Chairperson shall, on the record and prior to continuing the hearing, obtain a statement from each accused officer that he or she understands the potential for a conflict of interest and waives the right to a separate.

## **216 OATH ADMINISTERED TO WITNESSES.**

**216.25 ADMINISTERED BY CHAIRPERSON.** The oath is administered to the witnesses by the Chairperson of the Board.

**216.50 PROCEDURE.** The oath is generally administered to the witnesses and accused as a group, but it may be administered to them individually.

**216.75 WITNESS' OATH.**<sup>16</sup> The following oath shall be administered to the witnesses:

- **Oath.** "Do you solemnly swear (or affirm) that the evidence you shall give in the case now in hearing before this Board of Rights shall be the truth, the whole truth, and nothing but the truth?"

## **218 OATH ADMINISTERED TO INTERPRETER.**

**218.25 ADMINISTERED BY CHAIRPERSON.** The oath is administered to the interpreter by the Chairperson of the Board.

**218.50 INTERPRETER'S OATH.** The following oath shall be administered to the interpreter:

- **Oath.** "Do you solemnly swear (or affirm) that you will faithfully and accurately interpret \_\_\_\_\_ (specify language) into English and English into \_\_\_\_\_ (specify language)?"

## **220 PLEA OF ACCUSED.**

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<sup>16</sup> See Charter §1070(m).

**220.20 PLEA OF GUILTY OR NOT GUILTY.** The Chairperson of the Board shall read the charge or charges and direct the accused to plead guilty or not guilty to each specific charge. If the accused attempts to enter any plea other than guilty or not guilty, the Board shall deem the plea to be one of not guilty.

**220.40 PLEA OF GUILTY - EVIDENCE OF GUILT.** No other evidence is required to be taken upon the question of guilt pertaining to the charge or charges to which the accused pleads guilty.

**220.60 PLEA OF GUILTY-DETERMINATION OF PENALTY.** For the purpose of determining a penalty only, the Board should hear or receive into evidence all pertinent information relative to the charge or charges to which the accused pleads guilty.

**220.70 PLEA OF GUILTY - MUST MAKE FINDING.** When the accused pleads guilty to a charge or charges, the Board must nevertheless make a specific finding of "guilty" or "not guilty" to such charge or charges.

**220.80 PLEA OF NOT GUILTY.** If the accused pleads not guilty, the case shall be heard in accordance with the regular hearing procedures as set forth in this Manual.

**222 OPENING STATEMENT.**

**222.20 DEPARTMENT.** The Department Advocate may present an opening statement.

**222.40 ACCUSED.** The accused may present an opening statement.

**224 FIRST WITNESS CALLED BY DEPARTMENT.**

**224.10 DIRECT EXAMINATION.** The direct examination of the witness is conducted by the Department Advocate. After a witness has testified to his or her independent recollection, a witness may be allowed to refresh his or her memory respecting a fact, by anything written by the witness or under the witness' direction, at the time when the fact occurred, or immediately thereafter, or at any other time when the fact was fresh in the witness' memory, and the witness knew that the same was correctly stated in writing. If the witness testifies differently than during the course of the investigation, a party may "refresh" the witness' memory by confronting the witness with his or her original statements. This shall not necessarily be considered as impeaching the witness, but may be considered in evaluating the witness' credibility.

**224.20 CROSS-EXAMINATION.** The accused may cross-examine the witness.

**224.30 EXAMINATION BY BOARD.** The Board members may examine the witness. The Board may require police officers subpoenaed as witnesses to testify. When police officers acquire knowledge of facts which will tend to incriminate any person, it is their duty to disclose such facts to their superior. It is a violation of said duties for any police officer to refuse to disclose pertinent facts within his knowledge even though such disclosure may show or tend to show that the officer has engaged in misconduct.

Any Board member may ask questions of any witness on direct examination, cross-examination, or rebuttal. Board members may interrupt to interject a question at any time, but such interruptions should be kept to a minimum unless a useful purpose is served. If convenient and practical, the Board members should save questions until the proper time and they should have writing material and make notes regarding questions during the hearing.

There are no restrictions on the type, number, or content of the questions that a Board member may ask, except that questions should be confined to the case at hand unless there is good cause for the deviation. Opinions on testimony and evidence should not be voiced by the Board members, unless framed as a proper question during a hearing, but should be saved for consideration at the time of deliberation.

**224.40 REDIRECT AND RECROSS-EXAMINATION.** The Department Advocate and the accused may redirect and recross-examine the witness.

**224.50 ADDITIONAL QUESTIONING BY BOARD.** The Board members may ask additional questions of the witness if they desire.

**224.60 WITNESS EXCUSED.** The witness may be excused if his or her presence is no longer required and the Board, Department Advocate, and accused agree to his or her absence.

**224.70 STRICT ADHERENCE TO PROCEDURE NOT NECESSARY.** The procedure outlined in Section 224 of this Manual need not be strictly followed. However, the Department Advocate, or accused shall obtain permission from the Board before deviating from this procedure.

**228 REMAINING WITNESSES CALLED BY DEPARTMENT.** The remaining witnesses are called by the Department. The Department or the Board may call the accused officer as a witness at anytime during the proceedings.

**228.50 PROCEDURE.** The same procedure which is outlined in Section 224 of this Manual is followed in examining the remaining witnesses.

**229 MOTION FOR FINDING OF NOT GUILTY.** After the Department Advocate has completed his or her presentation of evidence, the accused, without waiving his or her right to offer evidence in support of his or her defense or in rebuttal in the event the motion is not granted, may move the Board of Rights for a finding of not guilty. The Board members as triers of fact shall weigh the evidence and may render a direct finding of not guilty in favor of the accused or decline to render any findings until the close of all the evidence. If a finding of not guilty is rendered, the Board members shall make a statement of decision in accordance with Section 260.90 and 264.50 of this Manual.

If it appears that the evidence presented supports the granting of the motion as to some but not all the charges involved in the case, the Board members may grant the motion as to those charges and the hearing shall proceed as to the charges remaining.

**232 FIRST WITNESS CALLED BY ACCUSED.**

**232.10 DIRECT EXAMINATION.** The direct examination of the witness is conducted by the accused. After a witness has testified to his or her independent recollection, a witness may be allowed to refresh his or her memory respecting a fact, by anything written by the witness, or under the witness' direction, at the time when the fact occurred, or immediately thereafter, or at any other time when the fact was fresh in the witness' memory, and the witness knew that the same was correctly stated in writing. If the witness testifies differently than during the course of the investigation, a party may "refresh" the witness' memory by confronting the witness with his or her original statements. This shall not necessarily be considered as impeaching the witness, but may be considered in evaluating the witness' credibility.

**232.20 CROSS-EXAMINATION.** The Department Advocate may cross-examine the witness.

**232.30 EXAMINATION BY BOARD.** The Board members may examine the witness. The same provisions apply to this examination that are outlined in Section 224.30 of this Manual.

**232.40 REDIRECT AND RECROSS-EXAMINATION.** The accused and the Department Advocate may redirect and recross-examine the witness.

**232.50 ADDITIONAL QUESTIONING BY BOARD.** The Board members may ask additional questions of the witness if they desire.

**232.60 WITNESS EXCUSED.** The witness may be excused if his or her presence is no longer required and the Board, Department Advocate, and accused agree to his or her absence.

**232.70 STRICT ADHERENCE TO PROCEDURE NOT NECESSARY.** The procedure outlined in Section 232 of this Manual need not be strictly followed. However, the Department Advocate, or accused shall obtain permission from the Board before deviating from this procedure.

**236 REMAINING WITNESSES CALLED BY ACCUSED.** The remaining witnesses are called by the accused.

**236.50 PROCEDURE.** The same procedure which is outlined in Section 232 of this Manual is followed in examining the remaining witnesses.

**240 REBUTTAL WITNESSES FOR DEPARTMENT.** The Department Advocate may call rebuttal witnesses.

**240.50 PROCEDURE.** The same procedure which is outlined in Section 224 of this Manual is followed in examining the rebuttal witnesses.

**244 REBUTTAL WITNESSES FOR ACCUSED.** The accused may call rebuttal witnesses.

**244.50 PROCEDURE.** The same procedure which is outlined in Section 232 of this Manual is followed in examining the rebuttal witness.

**248 EVIDENCE.** For a discussion of the evidence which may be introduced and received by the Board, see Section 363 of this Manual.

**249 STIPULATIONS AND COMPROMISES.** Any dispute before the Board may be resolved by stipulation or by settlement between the parties, subject to the Board's acceptance of that stipulation or settlement.

**252 CASE CLOSED.** The case is closed after the Advocate and the accused rest and the Board has determined that no further testimony or evidence is necessary. The case shall be closed prior to the commencement of closing arguments.

## **256 CLOSING ARGUMENTS**

**256.20 BY DEPARTMENT ADVOCATE.** The Department Advocate may present a closing argument. The Department Advocate retains the right to rebut any closing argument made by the accused, however, any rebuttal must not exceed the scope of the defense closing nor raise new issues.

**256.40 BY ACCUSED.** The accused may present a closing argument. If new issues are raised by the Advocate in rebuttal, the accused is entitled to a surrebuttal only to the new issues.

## **260 DELIBERATION BY BOARD ON FINDING.**

**260.30 CONFIDENTIALITY OF DELIBERATIVE PROCESS.** The Chairperson shall clear the room of all persons except Board members during the deliberations. The deliberative process is confidential. Only the legal or evidentiary basis for the Board's findings or minority report shall be included in the rationale, but not the deliberative or mental processes of the Board members.

**260.60 CHARGES SUBSEQUENTLY DETERMINED TO BE OUTSIDE OF LIMITATIONS PERIOD.** When a Board of Rights determines through the examination of evidence that one or more of the charges is outside the applicable statute of limitations period, the Board shall without delay forward to the Chief of Police a proposed amended complaint with the out-of-statute charge or charges removed. The Board shall, with the proposed amended complaint, notify the Chief of Police that the amendment is proposed because the Board has determined that the charge or charges to be removed exceed the statute of limitations, and shall request that the Chief of Police sign the amended complaint without delay. If the Board determines that all of the charges are outside the applicable statute of limitations the Board shall request that the Chief of Police remove the charges and close the Board.

**260.90 MAJORITY VOTE.** A majority of the Board members must agree to a finding of "guilty" or "not guilty" on each specific charge; the Board may not dismiss any charge.<sup>19</sup> The vote need not be unanimous, a majority vote of the three Board members is sufficient for a finding. The dissenting member, if any, may attach a minority report or state on the record

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<sup>19</sup> See Charter §1070(n).

his or her reason(s) for dissenting with the decision of the majority of the Board. If the accused is found "not guilty," the accused shall be immediately restored to duty without loss of pay and without prejudice.<sup>20</sup>

## **264 ACCUSED INFORMED OF FINDING.**

**264.50 CHAIRPERSON INFORMS ACCUSED.** The Chairperson shall inform the accused of the finding of the Board on each specific charge. The Board shall clearly disclose and adequately explain the grounds upon which it acted for each count so the accused and the Department are intelligently informed as to the reason for the finding.

**264.75 RECORDED.** The finding shall be recorded by the reporter and signed by all three Board members, regardless of their individual decisions.

## **265 EXAMINATION OF PERSONNEL FILE.**

**265.10 PURPOSE.** The Board members may examine the departmental personnel history and records of the accused only for the purpose of determining a proper penalty to be prescribed. The medical package of the accused shall not be considered by the Board in determining a penalty.

**265.20 AFTER FINDING.** The Board members may examine the departmental personnel history and records of the accused only after a finding of guilty.<sup>22</sup> The Board may consider the entire departmental history and record of the accused which shall include, among other things, information concerning personnel complaints against the accused that were sustained. The Board may also review Internal Affairs Group's prepared summaries of not resolved complaints against the accused. Upon the request of the accused or a member of the Board, the Board may review information derived from the personnel complaints against the accused that were not resolved.<sup>23</sup> However, the Board shall not review or consider any not resolved allegation whose last date of alleged occurrence is more than five years prior to the date the instant charge is filed with the Police Commission. (See Section 265.10.)

**265.30 CHAIRPERSON CLEARS ROOM.** The Chairperson shall clear the room of all persons except Board members, the accused, representative(s) of the accused, the Department Advocate and the reporter, during examination of the departmental personnel history and records of the accused. This portion of the proceedings shall be recorded, and the corresponding portion of the transcript shall be sealed.

**265.40 ACCUSED PRESENT.** The accused must be present at the time that the Board examines the accused's departmental personnel history and records and be allowed to explain any adverse items of entry, unless the accused has failed or refused to be present.<sup>21</sup>

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<sup>20</sup> See Charter §1070(n).

<sup>22</sup> See Charter §1070(o).

<sup>23</sup> See Charter §1070(o).

<sup>21</sup> See Charter §1070 (o).



**265.50 INFORMATION CONTAINED IN THE PERSONNEL PACKAGE.** At the penalty stage, the Board may consider the entire Departmental personnel history and record of the accused.<sup>22</sup> However, to ensure a complete record for potential judicial review, any party or the Board may introduce as evidence a copy of any part of that departmental personnel history or other relevant record which is to be reviewed during the penalty phase.

**266 CHARACTER WITNESSES.**

**266.20 ACCUSED.** To assist the Board in determining a proper penalty, the accused may call witnesses to testify regarding the character traits or work performance of the accused. In the event the accused does call character witnesses, the Department Advocate may call rebuttal character witnesses.

**267 PENALTY EVIDENCE AND RECOMMENDATIONS.**

**267.20 EVIDENCE RELEVANT TO AN APPROPRIATE PENALTY.** In addition to character witnesses, the accused or the Department Advocate may present any other relevant evidence which he or she reasonably believes may assist the Board in determining an appropriate penalty. The weight given to any such evidence shall be determined by the Board and the Board shall retain the right to limit or exclude the presentation of evidence it deems unnecessary in determining an appropriate penalty. The Board shall not receive any opinion evidence concerning the appropriate penalty.

**272 DELIBERATION BY BOARD ON RECOMMENDED PENALTY.**

**272.20 . CONFIDENTIALITY OF DELIBERATIVE PROCESS.** The Chairperson shall clear the room of all persons except Board members during the deliberations. The deliberative process is confidential. Only the legal or evidentiary basis for the Board's findings or minority report shall be included in the rationale, but not the deliberative or mental processes of the Board members.

**272.30 POSSIBLE PENALTIES.** The only penalties which may be recommended are prescribed by the Los Angeles City Charter,<sup>23</sup> and are as follows:

- **Reprimand.** Reprimand without further penalty.
- **Suspension.** Suspension for a definite period not exceeding 65 eight-hour working days with total loss of pay, and with or without demotion in rank or reprimand, or both. (See Section 276.75). A working day is defined as an eight hour day.
- **Demotion.** Demotion in rank, with or without suspension for a period not exceeding 65 eight-hour working days with total loss of pay, or reprimand, or both.
- **Removal.** Removal from office or position.

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<sup>22</sup> Charter §1070 (o).

<sup>23</sup> See Charter §1070(n).

**272.40 SUSPENSION AND DEMOTION.**<sup>24</sup> Whenever a suspension and demotion are imposed as a penalty, the effective date of the suspension and demotion shall be specifically determined for each part of the penalty pursuant to Sections 272.50 and 272.65 of this Manual.

**272.50 EFFECTIVE DATE OF SUSPENSION.** A suspension shall be effective as follows:

- In any case where a suspension is imposed following a temporary relief from duty pending a hearing before a Board of Rights, the suspension shall be computed from the first day such officer was relieved from duty without pay. Provided, however, in any case where an officer has been restored to duty, such suspension shall be effective as soon as practicable. Such suspension shall include those days an officer was relieved from duty without pay.
- In any case where an officer is served with a Complaint and Relief From Duty, Suspension or Demotion, Form 1.61, for suspension and demotion or suspension, such suspension shall be effective the day following the period during which the suspension may be appealed to a Board of Rights or as soon as practicable thereafter. Provided, however, that in any case where a suspension is appealed to a Board of Rights, such suspension shall be stayed pending the hearing and decision by the Board.
- In all cases where a suspension is recommended by a Board of Rights and is upheld by the Chief of Police, such suspension shall be imposed as soon as practicable thereafter. Such suspension shall include those days an officer was relieved from duty without pay. Nothing shall preclude the imposition of a suspension without pay when a final decision is made prior to the end of the 30 day period(s) referred to in section 336.<sup>25</sup>

**Note:** Suspensions shall be imposed as soon as practicable, considering deployment needs. A suspension period shall not be split, i.e., a portion before and after a period of work, etc., unless approval is granted by the Commanding Officer, Professional Standards Bureau.

**272.60 DEMOTION IN CIVIL SERVICE RANK.**<sup>26</sup> The demotion of an officer is subject to the following:

- Demotion is limited to one civil service class regardless of probationary status; i.e., Lieutenant to Sergeant.
- An officer who is demoted will be reduced to the highest previously held paygrade and non-merit pay step in the next lower civil service class previously held.

**Note:** Sergeants and detectives are considered equal classes for the purpose of demotion.

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<sup>24</sup> See Charter §1070(q).

<sup>25</sup> See Charter §1070 (q)

<sup>26</sup> See Charter §1070(n).

- A demoted officer may be transferred at the discretion of the Chief of Police to any vacant authority in the employee's "new" classification and paygrade.
- An officer who has been demoted by the Chief of Police under Charter section 1070(3)(c) may appeal that decision to a Board of Rights.

**272.65 EFFECTIVE DATE OF DEMOTION.** A demotion shall be effective as follows:

- In any case where an officer is demoted following a temporary relief from duty or cancellation of such relief from duty pending a hearing before a Board of Rights, the demotion shall not be stayed unless the accused requests in a written application that the Board consider the demotion. If such an application is made, the demotion shall be effective upon the filing of the Decision of the Board and Execution of the Order with the Police Commission.<sup>27</sup>
- In any case where an officer is served with a Complaint and Relief From Duty, Suspension or Demotion, Form 1.61, for suspension and demotion or demotion, such demotion shall be effective the day following the period during which the demotion may be appealed to a Board of Rights. Provided, however, that in any case where a demotion is appealed to a Board of Rights and a hearing is held, such demotion shall be effective upon the filing of the Decision of the Board and Execution of the Order with the Police Commission.
- In all cases where demotion is recommended by a Board of Rights and upheld by the Chief of Police, the Advocate shall, upon receipt of the Execution of the Order, immediately notify the accused employee of such fact. The Decision of the Board and Execution of the Order shall be filed with the Police Commission on the last day of the five (5) day period in which it is to be filed.

**272.70 EFFECTIVE DATE OF REMOVAL.** A removal shall relate back to and be effective as of the first day of such relief from duty without pay pending a hearing before and decision by the Board; provided, however, in case of removal where a final decision has been made by the Chief of Police prior to the end of the thirty-day period of relief from duty with pay, such removal shall be effective immediately. When there is a removal without relief from duty or after cancellation of relief from duty, the removal shall be effective upon service of the Decision of the Board and Execution of the Order.

**272.80 SEVERITY OF PENALTIES.** The severity of penalties is established, in decreasing order,<sup>28</sup> as follows:

- Removal
- Suspension and demotion with or without reprimand

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<sup>27</sup> See Charter §1070(b).

<sup>28</sup> See Charter §1070(n).

- Demotion with or without reprimand
- Suspension with or without reprimand
- Reprimand

**272.90 MAJORITY VOTE.** A majority vote of the Board members is sufficient to determine the recommended penalty. The vote need not be unanimous, and the dissenting member, if any, may attach a minority report or state on the record his or her reasons(s) for dissenting with the decision of the majority of the Board.

## **276 ACCUSED INFORMED OF RECOMMENDED PENALTY.**

**276.50 CHAIRPERSON INFORMS ACCUSED.** The Chairperson informs the accused of the recommended penalty. The chairperson shall clearly disclose, for the record, the specific factors which influenced the Board's decision in reaching its penalty recommendation.

**276.75 RECORDED.** The recommended penalty shall be recorded by the reporter and signed by all three Board members. Any recommended penalty of a suspension shall be stated in working days. The suspension of an officer for a total period of thirty (30) days with loss of pay is deemed to mean twenty-two (22) working days.<sup>29</sup> However, a three month suspension shall mean sixty-five (65) working days.<sup>30</sup> If the accused officer works a modified or flexible work schedule, the Board shall state the penalty in working days based on an eight-hour (8) day and the suspension will be converted to the comparable number of hours.

## **278 PENALTY HELD IN ABEYANCE PENDING COMPLETION OF SPECIFIC INSTRUCTIONS.**

**278.20 AFTER FINDING OF GUILT AND DELIBERATION ON PENALTY.** If a Board of Rights, in the course of its deliberation on penalty, determines that the acts or omissions forming the basis for the complaint are attributable to medical conditions based substantially on the abuse of alcohol which, if corrected, would make the accused a fit and suitable officer, the Board may recommend to the accused officer that the penalty phase of the Board of Rights be held in abeyance for up to one year pending completion of specific treatment recommended by a competent witness during the hearing.

**278.40 WAIVER BY ACCUSED OFFICER.** In order for a Board of Rights to hold its penalty recommendation in abeyance, the accused officer must be apprised of the right to an immediate penalty recommendation and the reason for holding the penalty recommendation in abeyance. The accused officer must inform the Board that the right to an immediate penalty recommendation and the reason for holding the penalty recommendation in abeyance are understood, and that such right is waived and the recommended treatment will be completed. The Board shall cause such waiver to be put in writing and signed by the accused officer prior to continuing the hearing.

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<sup>29</sup> See Charter §1070(b)(2).

<sup>30</sup> See Charter §1070(n).

**278.60 MONITORING COMPLETION OF SPECIFIC TREATMENT.** If the penalty phase of a Board of Rights has been held in abeyance pending completion of specific treatment, the Board shall convene at specific intervals (preferably on a quarterly basis), to review the progress of the accused officer in completing the treatment and complying with the conditions of the rehabilitation agreement. At the end of the period set for treatment, which period shall not exceed one year, the Board shall meet for a final review of the completion of such treatment and thereafter deliberate on the recommended penalty. The successful completion of a rehabilitation agreement, in and of itself, is not intended to lessen such penalty.

- 279 RECOMMENDATIONS MADE BY A BOARD OF RIGHTS.** A Board of Rights may make recommendations, as set forth below, in addition to the adjudication of the charges before it. Except for confidential recommendations as mentioned in Section 279.20, all recommendations by the Board shall be made on the record.

**279.10 RECOMMENDATIONS FOR REHABILITATION.** Upon a finding of guilty and notwithstanding the provisions of Section 278 of this Manual, a Board of Rights may, in addition to the recommended penalty recommend on the record to the Chief of Police that he or she enter into a rehabilitation agreement with the officer.

**279.20 ADMINISTRATIVE RECOMMENDATIONS.** A Board of Rights may recommend audits, additional investigations, the review of specific testimony, or such other action as it deems appropriate. If the recommendation is confidential, it may be reported orally to the Commanding Officer, Internal Affairs Group. The Chairperson of the Board of Rights shall be responsible for notifying the appropriate staff or command officer, either in writing or orally, of recommendations made by the Board.

**279.30 TRAINING RECOMMENDATIONS.** Where based on facts presented in the hearing the Board recommends that the officer receive training, the Board shall specify the reasons for the recommendation and specify the desired outcome of the training. In every case relating to unauthorized use of force, the Board shall examine the need for the officer to receive training.

**279.40 OTHER RECOMMENDATIONS.** Where the Board makes other recommendations concerning the officer, the Board shall explain the reasons for its recommendations and specify the desired outcome of the recommendations.

**279.50** The Board should be aware that if the Department orders an officer to follow a Board recommendation, the officer's participation will be on-duty, and at the Department's expense.

- 280 CHIEF OF POLICE NOTIFIED.** A certified copy of the decision and order shall be delivered to the Chief of Police for review and action as soon as practicable, but in no event later than ten (10) calendar days after the decision of the Board of Rights.

- 284 REHEARING.** Within three (3) years of removal, the accused may request a rehearing pursuant to Charter section 1070(t).

**284.30 HEARD AS A NEW CASE.** In the event that a Board of Rights is empanelled for the rehearing of a case where the officer was previously removed by action of a Board of Rights, the new Board shall hear the case from the beginning as if it were a new case.

**284.60 TRANSCRIPT AND EVIDENCE OF FIRST HEARING.** By stipulation, all or a part of the transcript of the first hearing, together with evidence adduced therein, can be introduced in evidence. Also, use of such evidence may be admissible for other purposes, i.e., as evidence of an admission or for purposes of impeachment.

**288 RESIGNATION OR RETIREMENT OF ACCUSED.** In the event an officer submits a resignation or retires subsequent to the filing of the complaint but prior to the completion of the Board of Rights hearing on the charges, the Chief of Police may notify the Board members in writing of the termination of the officer's employment and instruct the Board to close the file and adjourn.

**288.50 FILE CLOSED.** The case will neither be dismissed nor a finding made, but the Board will adjourn and the file will merely be closed.

**290 MAJORITY FOR CLOSING FILE.** A majority of the Board members is sufficient for the purpose of closing a file.

**292 RETURN TO PREVIOUSLY HELD CIVIL SERVICE CLASS.**

**292.10 PROCEDURES FOR RETURN TO PREVIOUSLY HELD CIVIL SERVICE CLASS FOLLOWING DEMOTION.** Following demotion, the return to a previously held civil service class shall be by one of the following:

- The normal civil service promotion process.
- Upon the approval of a request for reversion.

**300 GENERAL REGULATIONS GOVERNING BOARDS OF RIGHTS HEARINGS**

**300 CONTENTS OF CHAPTER.** This chapter explains other general regulations pertaining to conducting a Board of Rights hearing.

**305 TIME PERIODS.**

**305.25 CALCULATION OF TIME PERIODS.** Except as otherwise provided in this Manual, time periods shall be calculated in calendar days. When the last day of any such period falls on a weekend or City holiday, such period shall be extended to the next business day.

**307 PERSONNEL NOT EXCLUDED.** Whenever a Board of Rights is held as a closed hearing and during the examination of the departmental personnel history and records of the accused, the following personnel, or persons acting in such capacity, shall be allowed to remain as part of their supervisory responsibilities.

- Commanding Officer, Professional Standards Bureau
- Commanding Officer, Internal Affairs Group

- Captains assigned to Internal Affairs Group
- Department Advocate
- Staff of the City Attorney's Office

With the approval of the accused officer, Directors of the Los Angeles Police Protective League or the Command Officers Association, or their representatives, will be allowed to attend.

The Board may allow specific other persons to be present during all or a portion of a closed hearing for a reason(s) it deems appropriate.

**308 NO EX PARTE CONTACT.** Neither any member of the Board, nor the Board itself, may have any ex parte contact with any witness, any party, any representative of any party, the Department Advocate presenting the case, or the accused regarding the subject matter of the hearing while proceedings are pending. No person shall attempt to influence the decision of a Board of Rights except during the hearing and on the record. Nothing in this section shall preclude the Board or any member of the Board from having contact with the City Attorney or some duly authorized deputy pursuant to Section 120.60 of this Manual.

**318 JOINT HEARING.** Accused officers may have a joint Board of Rights hearing on charges arising from the same operative facts upon agreement of two or more of the accused officers and the Department Advocate. Notwithstanding the above, each officer may have a separate Board of Rights hearing.

**318.10 DEFINITION OF JOINT BOARD OF RIGHTS.** A joint Board of Rights shall consist of three members selected in accordance with Charter section 1070 for the purpose of hearing one accused officer's case. By mutual agreement, one or more accused, waives the right to have the matter heard by the Board members drawn by the officer and agrees to have the case joined with and heard by the Board of Rights members drawn by another officer.

**Note:** If all or some of the officers of a joint Board of Rights waives his or her right to confidentiality as to his or her personnel history and records, the other accused officer(s) and (s) may remain during the discussion of the other officer(s) personnel records. Such waiver shall be taken on the record.

**318.20 JOINT BOARD UNABLE TO PROCEED.** In any case where there is an agreement for a joint Board of Rights hearing and the Board is unable to proceed because of the extended absence or unavailability of one or more of the accused, the Advocate or the Board may request that the charges involving the absent officer be heard before a different Board so the matter can proceed. The request to sever the matter as to the absent officer or an officer who is absent or unavailable shall be submitted to the Chief of Staff, or, in his or her absence, the next available Assistant Chief, whose decision shall be binding (see Sections 190 and 336.60). If the matter is severed as to the absent officer or officer whose is absent or unavailable, the panel agreed upon to hear the joint Board shall proceed as to the remaining accused officer(s) and the accused whose charges were severed from the matter shall have his or her matter

heard by the Board members originally selected by him or her. If the panel agreed upon for the joint Board was drawn by the accused whose matter has been severed, he or she shall draw a new Board of Rights as soon as practicable, but in no event later than seven days following the decision by the Chief of Staff to sever the matter.

## **327 HEARING IN ABSENTIA.**

### **327.50 CHIEF OF POLICE MAY ORDER HEARING IN ABSENCE OF ACCUSED.**

In the event that the accused officer fails, in any case, to request a hearing before a Board of Rights as provided by Charter Section 1070, or without reasonable excuse fails, neglects, or refuses to appear before a Board properly empanelled, the Chief of Police may direct the Board of Rights to proceed in the absence of such accused or may impose a penalty without a hearing.<sup>33</sup>

- 336 CONTINUANCES.** After the Board of Rights has first convened, the Board may continue the hearing of the matter to a specific date, and no other notice need be given, except as may be required by the Board.<sup>34</sup> There shall be a calendar priority for Board of Rights hearings when an accused officer is relieved from duty pending a hearing. The Board shall ensure that the party requesting a continuance (i.e., Board, Advocate or Accused) and the reason for such continuance is noted on the record.

**336.05 PAY WHILE RELIEVED OF DUTY.** An accused employee who is temporarily relieved of duty on a new charge or charges while relieved of duty or who is serving a suspension shall not be entitled to an additional 30 or 60 days of compensation.

**336.10 LENGTHY HEARINGS.** When it is estimated that a hearing will require three or more days to complete, consideration may be given to limiting consecutive daily sessions to a maximum of two days.

**336.15 REQUEST.** Continuances may be requested by Board members, the Department Advocate, or the accused.

**336.30 MAJORITY FOR INITIAL MEETING.** A majority of the Board members at the initial or any subsequent meeting is sufficient for the purpose of a continuance.

**336.45 DECISION BY BOARD.** The decision on the matter of continuance shall be made by the Board members. If there is a disagreement among the Board members, the decision shall be made by a majority vote.

**336.60 DURATION.** Continuances may be granted for good cause to a time agreeable to both the Department Advocate and the accused. Except under unusual circumstances, hearings should not be continued for a period of time exceeding three (3) months from the date the accused was served with the verified written complaint. Continuances of a longer duration should be avoided since Los Angeles City Charter section 1070, provides that any person restored to duty or reinstated in his office or position after suspension or removal shall

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<sup>33</sup> See Charter §1070(i) and (m)

<sup>34</sup> See Charter §1070(g).



be entitled to full compensation from the city, provided that such compensation shall not be for more than one year's salary.<sup>36</sup>

**336.75 INABILITY OF A BOARD MEMBER TO ACT.** At any time that a majority of the Board determines a Board member is unable to act, thus causing an extended or unreasonable delay in the hearing the accused shall replace such member as follows. If the person is a sworn member, the accused shall draw another name from the box containing the names of all eligible sworn Board members and select another Board member from the newly drawn name and the two names he initially discarded. If such person is a civilian member, the selection of a new civilian member shall be accomplished pursuant to Section 177 of this Manual.

In any case where testimony has previously been given, the new member shall review the transcripts of all prior proceedings held in the matter and shall examine or view any other evidence previously received and the hearing shall be continued for that purpose for not more than sixty (60) days unless the Board orders otherwise for good cause shown.

**336.90 RECALL OF A RETIRED MEMBER.** A sworn Board member who has retired may be recalled to active duty pursuant to Department Manual Section 3/733 for the purpose of completing a hearing.

#### **340 WITNESS SUPPORT.**

**340.10 PRESENCE OF A SUPPORT PERSON.** All minor witnesses and any witnesses of serious crimes, including sexual crimes and sexual harassment, may have a person present during their testimony to offer support. Other than the investigating officer, if the support person is a witness in the same proceeding and has yet to testify, the Board of Rights shall determine if the presence of this person is likely to hinder the Board's ability to determine the truth of the matter. If so, the person shall be excluded as the support person. Any support person who is disruptive or disorderly during the proceedings may be expelled by the Board. Where a support person is excluded or expelled, another person may be selected to act as a support person for the witness. However, it is not mandatory that the Board be continued for this purpose.

#### **345 AMENDING COMPLAINTS.**

**345.30 OFFENSE RELATIVE TO ORIGINAL CHARGE.** If, during the course of a hearing, evidence is disclosed against the accused in proof of any offense relative to the original charges but not included therein, or if it is determined that a material fact has been improperly stated on the original charge, the Board of Rights should request the Chief of Police to amend such charges so as to include specifications embodying such offense, which will then become a part of said original charges. The accused must be allowed reasonable opportunity, if needed and desired, to prepare a defense for such amended charges, and the hearing shall be continued for that purpose.

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<sup>36</sup> See Charter §1070(4) (w).

**345.60 OFFENSE NOT RELATIVE TO ORIGINAL CHARGES.** If, during the course of a hearing, evidence is disclosed against the accused in proof of any offense not associated with the original charges in type or time and place, the Board of Rights should not request amendment of the charges but a separate investigation should be conducted and new charges prepared by the Department Advocate on the new offense. The accused shall have two separate hearings, one on the original charges and one on the new charges, unless the accused elects to have the new charges heard by the original Board.

**354 MAJORITY VOTE.** At all times a majority vote of the Board members will determine the action of the Board.

**354.30 BOARD NEED NOT BE UNANIMOUS.** The vote of the Board need not be unanimous to make any decision, but a majority vote shall decide questions of objections, continuances, findings, penalties, requests for closed hearings, etc.

**354.60 MINORITY REPORT.** A dissenting Board member may attach a minority report or state on the record his or her reason for dissenting with any decision of the majority of the Board.

**363 EVIDENCE.**

**363.10 NO STRICT ENFORCEMENT OF RULES OF EVIDENCE.** The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

In Board of Rights proceedings, the Department shall have the burden of proving each charge, including those based on conduct punishable in whole or in part as a crime, by a preponderance of the evidence.<sup>37</sup> The courts have regarded the weight and sufficiency of the evidence as matters of administrative discretion, and have sustained the agency's decision if a "preponderance" of the evidence supports it. While proceedings before an administrative board such as a Board of Rights are quasi-judicial in nature they are not within the regulatory provisions of the Code of Civil Procedure, and are not to be marked by the refinement and subtleties which are characteristic of the conduct of actions in a court of law.

**363.20 RELEVANCY.** Evidence is relevant when it has a tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.

**363.30 ADMISSIONS AGAINST INTEREST.** Admissions against interest made by the accused to another person who testifies at a Board of Rights hearing will have the same weight and admissibility as direct evidence.

**363.40 HEARSAY.** Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it

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<sup>37</sup>See Charter §1070(l).

would be admissible over objection in a civil action. If the hearsay would be inadmissible over objection in a civil action, the Board may not rely on it to make a finding of ☐Guilty.

**363.50 PATTERN OF CONDUCT.** A Board of Rights may accept evidence of prior acts of the accused, irrespective of whether they were associated with a personnel complaint against the accused and irrespective of the resolution of such complaint, if relevant to the charges, such as, if tending to prove that the conduct charged is consistent with a pattern of conduct.<sup>38</sup> The prior acts may have occurred either before or after the conduct concerning which the accused is presently charged.

**363.60 OFFICIAL NOTICE.** An Administrative Tribunal may take official notice of any generally accepted technical or scientific matter within its special field and of any fact which may be judicially noticed by the courts of this State. The accused shall be informed of matters to be so noticed and given a reasonable opportunity to refute the officially-noticed matters. Such matters shall be noted in the record.

**363.70 EVIDENCE SUFFICIENT TO SUSTAIN A DECISION OF THE BOARD.** A finding of guilty must be supported by a preponderance of the evidence before the Board. Evidence must be reasonable in nature, credible, and of solid value. Inferences based only on mere possibility, suspicion, speculation, imagination, guesswork, supposition, conjecture, or surmise must be rejected.

Guilt, however, need not be established beyond a reasonable doubt as is required for the conviction of a crime. In this connection, it should be understood that administrative proceedings are not penal in nature and are not governed by the theories developed in the field of criminal law.

**363.75 NO TESTIMONY BY MEMBERS OF PRIOR BOARD.** Members of a Board of Rights shall not testify in any subsequent Board of Rights proceeding regarding any conclusion, decision or ruling or their thought process or rationale for such conclusion, decision or ruling that occurred at or in conjunction with a prior hearing.<sup>39</sup>

**363.80 EVIDENCE OF CHARACTER AND WORK PERFORMANCE.** Unless relevant to the charges, evidence of the character or work performance of the accused should not be heard by the Board until after there has been a finding of guilty.

**363.90 PENALTY RECOMMENDATION.** A Board of Rights is considered a de novo proceeding which provides an opportunity to determine each witness' credibility, examine evidence, and review and discuss with the officer his or her personnel file, and, as such, is best suited to make an appropriate penalty recommendation. When a suspension is appealed to a Board of Rights and there is a finding of "guilty", the Board shall, at the beginning of the penalty phase, be informed of the penalty prescribed by the Chief of Police and that recommended at each level of review during the adjudication of the investigation. When the penalty, as prescribed by the Chief of Police, is an increase or decrease based upon the addition or deletion of a charge(s), the Board shall be so informed by the Advocate.

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<sup>38</sup> See Charter §1070(m).

<sup>39</sup> Evidence Code §703.5.

**372 EFFECT OF CRIMINAL PROCEEDINGS.**

**372.25 CRIMINAL PROCEEDINGS AND BOARD HEARING NOT RELATED.**

Criminal proceedings and a Board of Rights hearing growing out of the same charge are entirely independent of each other. An acquittal upon a criminal charge does not relieve the accused from any departmental charges arising out of the same matter.

**372.50 CONVICTION OR ACQUITTAL ON CRIMINAL CHARGE NOT BINDING ON BOARD HEARING SIMILAR CHARGE.**

The purpose of the criminal proceedings is the punishment of crime and the purpose of the Board of Rights hearing is the maintenance of the morale and efficiency of the Police Department and its good reputation in the community. Therefore, the fact that a jury has acquitted an officer of a criminal charge does not prevent the Board from finding such misconduct on the officer's part as, in its judgment, disqualifying the officer for the office being held even though the same conduct by the officer is involved in both cases.

**372.75 CRIMINAL COURT TRIAL TRANSCRIPT.** The criminal court trial transcript may be used by the Board if it is available, under the general rules relating to secondary evidence.

**381 PHYSICAL EVIDENCE.**

**381.10 PHOTOGRAPHING OF PHYSICAL EVIDENCE.** Where practicable and when it is anticipated that physical evidence will be released after the hearing, the Advocate or Defense Representative intending to introduce such evidence shall cause it to be photographed prior to the hearing. Should the item be used during the hearing, the photograph of such item shall be submitted as an exhibit in lieu of the physical evidence.

**381.30 CUSTODY.** Physical evidence received shall remain in the custody of the Board, or as directed by it, during the hearing.

**381.60 RELEASE.** Upon final completion of the hearing, physical evidence received therein shall be released by the Department Advocate to the owner. An appropriate and sufficient description of such evidence shall be read by the Chairperson into the record during the hearing. The release of such evidence may be postponed if it is required for a related Board hearing(s), an appeal of the Board's decision, or for pending or future criminal or civil litigation.

**382 EXHIBITS.**

**382.10 MARKING EXHIBITS.** All items used as exhibits during a Board of Rights hearing shall be marked for identification prior to being used as an exhibit. Exhibits used by the Advocate shall be marked numerically, i.e., "Dept. 1", "Dept. 2", etc. Exhibits used by the accused shall be marked alphabetically, i.e., "Accused A", "Accused B", etc. Exhibits used jointly shall be marked numerically, i.e., "Joint 1", etc.

**382.20 RETENTION OF EXHIBITS.** Except as directed in Section 381 of this Manual, all exhibits marked for identification during a Board of Rights hearing, whether admitted as

evidence or not, shall be retained by the Advocate for possible submission to any court or tribunal of competent jurisdiction.

**390 EXPERT WITNESSES.**

Expert witnesses must first qualify as experts unless a stipulation has been entered into.

**395 DISCOVERY.** The Department shall supply to the accused the following, and confidential or privileged information shall be redacted:

- Complaint investigation, including addenda and any supplemental investigation.
- Notice of Proposed Disciplinary Action, response of the accused, and reply by the commanding officer.
- Photographs, photostatic, or laser reproductions of such photographs.
- Audio and videotapes.
- Rough notes completed during interviews (this does not include rough drafts of the investigation or letter of transmittal) will be made available upon request.
- Chronological Record.
- Department witness list, excluding rebuttal witnesses (not furnished at the same time as other discovery material).
- Pattern-of-conduct evidence not previously disclosed to the accused officer.

Such material shall be furnished as soon as is practicable after the accused officer has selected the members for his or her Board of Rights.

Where the accused has not been offered the material in a reasonable time to prepare a defense or has received incomplete discovery and notified the Advocate of the missing items, the accused may move that the Board grant a continuance to permit the accused to prepare a defense to the material. If the request appears reasonable, the Board is encouraged to permit a reasonable continuance.

**396 CONTACT OF WITNESSES FOR THE ACCUSED.** Generally, the Advocate will not interview witnesses not listed in the investigation who have been subpoenaed solely by the accused for his or her Board of Rights hearing. If it should be necessary to interview such a witness, the Advocate will make a reasonable effort to notify the accused prior to such interview. Notwithstanding the above, the Advocate retains the right to contact and/or interview any person who is or may become a witness in such hearing.

**397 REVIEW OF RATIONALE ON FINDINGS AND PENALTY RATIONALE.** At the conclusion of a Board of Rights hearing, the accused officer, pursuant to Government Code §§3305 and 3306, has a right to read and sign the Rationale on Findings and Penalty Rationale, if any, and to file a written response within 30 days from receipt of such

documents. If the accused officer does not read and sign the rationales or provide a written response within thirty days following the conclusion of the Board hearing and receipt of such documents, the officer shall be deemed to have waived his or her rights pursuant to Government Code §3305 and §3306. (See Sections 180.60 and 190.60 of this Manual.)

- 398 BOARD DECISION AND JUDICIAL REVIEW.** A Board of Rights, when it is duly constituted and proceeds under the authority vested in it and in the manner required of it by section 1070 of the Charter of the City of Los Angeles, has the essential attributes of and acts as a quasi-judicial body. As such, it is empowered to make a final adjudication of fact in connection with facts properly submitted to it.

## APPENDIX

### CHARTER OF THE CITY OF LOS ANGELES

#### CHARTER OF THE CITY OF LOS ANGELES SECTION 1070

##### **Sec. 1070. Rights and Due Process Procedures.**

(a) **Applicability; Rights.** As used in this section, member shall mean an employee of the Police Department who has peace officer status as defined in California Penal Code Section 830.1. The provisions of this section shall not apply to any member of the Police Department who has not completed the period of probation in his or her entry level position, as provided in Section 1011(a). Non-tenured Police officers, where otherwise entitled by law to a hearing or appeal with regard to proposed or imposed discipline, shall be provided a hearing or appeal under procedures promulgated by the Chief of Police.

The rights of a member, except the Chief of Police and any other member in a position exempt from civil service, to hold his or her office or position and to receive compensation attached to the office or position is hereby declared to be a substantial property right of which the holder shall not be deprived arbitrarily or summarily, nor other than as provided in this section. No member shall be suspended, demoted in rank, suspended and demoted in rank, removed, or otherwise separated from the service of the department (other than by resignation), except for good and sufficient cause shown upon a finding of guilty of the specific charge or charges assigned as cause or causes after a full, fair, and impartial hearing before a Board of Rights, except as provided in subsections (b) and (i). No case of suspension with loss of pay shall be for a period exceeding 65 working days.

(b) **Temporary Relief from Duty; Suspension; Demotion.** After following predisciplinary procedures otherwise required by law, the Chief of Police may:

- (1) temporarily relieve from duty any member pending a hearing before and decision by a Board of Rights on any charge or charges pending against the member, except that a member so relieved shall not suffer a loss of compensation until 30 days after the date on which the member was served with the charge or charges, except as provided for in subsection (q) or whenever the employee is temporarily relieved of duty on a new charge or charges while relieved of duty or serving a suspension based on a prior charge or charges. There shall be a calendar priority for Board of Rights hearings when a member is subject to relief from duty pending a hearing. The Chief of Police in his or her sole discretion shall have the power to cancel temporary relief from duty, or following relief from duty, to restore the member to duty with or without restrictions pending hearing; or
- (2) suspend the member for a total period not to exceed 22 working days with loss of pay and with or without reprimand, subject to the right of the member to a hearing before a Board of Rights as provided in this section; or

(3) demote the member in rank, with or without suspension or reprimand or both, subject to the right of the member to a hearing before a Board of Rights as provided in this section; or

(4) demote the member in rank, with or without temporary relief from duty or cancellation of such relief from duty, subject to the right of the member to a hearing before a Board of Rights as provided in this section.

In the event the member suspended and/or demoted in rank under this subsection files an application for a hearing by a Board of Rights as provided in this section, the suspension and/or demotion shall automatically be stayed pending hearing and decision by the Board of Rights. Provided, however, in the case of any member demoted in conjunction with a temporary relief from duty or cancellation of such relief from duty, the demotion shall not be stayed pending a hearing before and decision by a Board of Rights unless the accused specifically requests in the written application that the Board consider the demotion in conjunction with the appeal of the temporary relief from duty or cancellation of such relief from duty. In the event that the member fails to apply for a hearing within the period prescribed, the member shall be deemed to have waived a hearing, and the suspension and/or demotion shall remain effective unless the Chief of Police requires that a hearing be held.

(c) **Limitations Periods.** No member shall be removed, suspended, demoted in rank, or suspended and demoted in rank for any conduct that was discovered by an uninvolved supervisor of the department more than one year prior to the filing of the complaint against the member, except in any of the following circumstances:

- (1) If the act, omission, or allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.
- (2) If the member waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.
- (3) If the criminal investigation is a multi-jurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.
- (4) If the investigation involves more than one employee and requires a reasonable extension.
- (5) If the investigation involves an employee who is incapacitated or otherwise unavailable.
- (6) If the investigation involves a matter in civil litigation where the member is named as a party defendant, the one year time period shall be tolled while that civil action is pending.
- (7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.
- (8) If the investigation involves an allegation of workers' compensation fraud on the part of the member.



- (9) If a predisciplinary notice is required or utilized and the response results in additional investigation, the one-year period shall be tolled while the additional investigation is pending.

(d) **Complaint.** Any order of relief from duty, cancellation of relief from duty pending a Board of Rights hearing, suspension, demotion in rank, or suspension and demotion in rank shall contain a statement of the charges assigned as causes. The Chief of Police shall, within five days after the order is served as provided in subsection (e), file with the Board of Police Commissioners a copy of a verified written complaint upon which the order is based, with a statement that a copy of the order and verified complaint was served upon the accused. The complaint shall be verified by the oath of the Chief of Police and shall contain a statement in clear and concise language of all the facts constituting the charge or charges.

(e) **Service.** The service of any notice, order, or process mentioned in this section, other than service of subpoena, may be made by handing the accused a copy personally. If a copy of any notice, order or process cannot with reasonable diligence be personally served, service may be made by United States mail.

(f) **Application for Hearing.** Within five days after personal service upon the accused of a copy of the verified complaint, or within ten days after service in any other manner provided for in this section, the member may file with the Chief of Police a written application for a hearing before and decision by a Board of Rights. A Board of Rights is considered a *de novo* hearing.

(g) **Time and Place of Hearing.** Upon the selection of a Board of Rights, the Chief of Police shall set the time for (not less than 10 nor more than 30 days thereafter) and designate a place where the hearing is to be held, and shall cause notice thereof to be served upon the accused. After the Board of Rights has first convened, the Board may continue the hearing of the matter to a specific date, and no other notice need be given, except as may be required by order of the Board.

(h) **Composition of Board of Rights.** The Board of Rights shall be composed of two officers of the rank of captain or above and an individual who is not a member of the department (the civilian member). The members selected as prescribed in this section shall constitute the Board for the purpose of hearing and deciding upon the matter for which it was specially drawn. The qualifications of, selection procedures for, and compensation of the civilian members shall be established by ordinance. Upon the filing of the request for a hearing before a Board of Rights, as provided in subsection (f), the accused shall draw four cards from a box containing the names on cards of all officers who are qualified to be members of the Board of Rights (except the names of the accused, accuser, the Chief of Police, any staff or command officer specifically exempted by the Chief of Police in accordance with the provisions of the Board of Rights Manual or successor document, and any other officer who may be prejudiced or disqualified by reason of being a material witness to the facts constituting the charges made, otherwise disqualified for cause as determined by the Chief, or who has a conflict of interest). The accused shall select any two of the four names drawn to be members of the Board of Rights.

(i) **Failure to Request a Hearing; Failure to Appear.** In the event the accused fails to request a hearing before a Board of Rights as provided in subsection (f) within the period prescribed, the Chief may require a hearing to be held before a Board of Rights and may for that purpose, within five days after the expiration of such period, draw two names from a box to sit on the Board.

If a Board of Rights has been constituted for the purpose of hearing and the accused, without reasonable excuse, fails or refuses to appear before the Board at the time and place designated, the Chief of Police may, at his or her discretion, either direct the Board of Rights to proceed with the hearing in the absence of the accused, or the Chief may, without a hearing, impose a penalty of suspension, demotion in rank, suspension and demotion in rank, or removal as he or she deems fit and proper. The Chief shall cause notice of the action to be served upon the member and shall file a statement of the action with the Board of Police Commissioners within five days.

If the accused and Chief both fail to draw and create a Board of Rights within the period prescribed, the complaint shall be null and void.

(j) **Oaths, Affirmations and Subpoenas.** During an internal investigation, prior to a Board of Rights hearing, or prior to or during other administrative proceedings, the Police Commission may compel the attendance of witnesses and the production of evidence by subpoena. Upon demand of the Police Commission, the City Clerk shall issue a subpoena in the name of the city and attest the same with the corporate seal. The subpoena shall direct and required the attendance of the witnesses or the production of evidence, at the time and place specified. A request to quash a subpoena may be filed with the Police Commission who shall decide the matter. Each Board member shall have the power to administer oaths and affirmations in any investigation or proceeding pending before a Board of Rights, examine witnesses under oath, and compel the attendance of witnesses and the production of evidence by subpoena. Upon demand of any Board member, the City Clerk shall issue a subpoena in the name of the City and attest the same with the corporate seal. The subpoena shall direct and require the attendance of the witnesses or the production of evidence, at the time and place specified. It shall be the duty of the Chief of Police to cause all such subpoenas to be served upon the person or persons required to attend or produce evidence. It shall be the duty of the Council to provide suitable penalties for disobedience of such subpoenas and the refusal of witnesses to testify or produce evidence.

(k) **Legal Advice; Ex Parte Communication.** Upon the request of any two Board members, the Board's chairperson shall request an attorney from the City Attorney's office who shall advise the Board on legal matters during or between any session of the hearing. The attorney need not be physically present at the hearing, but may advise the Board telephonically or through other means of communication. The attorney who advises the Board may not advise the department's advocate in the same matter.

Ex Parte communication with members of a Board of Rights regarding the subject matter of the hearing while proceedings are pending is prohibited. No person shall attempt to influence the decision of a Board of Rights except during the hearing and on the record.

(l) **Burden of Proof.** In Board of Rights proceedings, the department shall have the burden of proving each charge, including those based on conduct punishable in whole or in part as a crime, by a preponderance of the evidence.

(m) **Representation; Transcript; Evidence.** At the hearing, the accused shall have the right to appear in person and by counsel or representative, (at his or her expense) and make defense to the charge or charges and may produce witnesses and cross-examine witnesses.

All testimony at the hearing shall be given under oath and shall be reported by a stenographer for possible transcription. Upon prepayment of the fee for the preparation thereof, the accused shall be entitled to a certified copy of the transcript; provided, however, when the department has previously had all or a portion of the report transcribed, a copy of the

previously prepared report(s) shall be given to the member without charge. When the report is transcribed, the original transcript shall be placed on file in the department.

Evidence of acts, irrespective of whether they were associated with a personnel complaint against the accused and irrespective of the resolution of the complaint, may be considered in the discretion of a Board of Rights if relevant to the charges, such as, if the acts tend to prove that the conduct charged is consistent with a pattern of conduct. The acts may have occurred either before or after the conduct concerning which the member is presently charged.

(n) **Finding and Decision.** The Board of Rights shall at the conclusion of the hearing make findings of guilty or not guilty on each charge, which findings shall be based only upon the evidence presented at the hearing. If the accused is found not guilty, the Board shall order the member's restoration to duty without loss of pay and without prejudice, and the order shall be self-executing and immediately effective. If the accused is found guilty, the Board of Rights shall prescribe its penalty by written order of:

- (1) suspension for a definite period not exceeding 65 working days with total loss of pay, and with or without reprimand; or
- (2) demotion in rank, with or without suspension or reprimand or both; or
- (3) reprimand without further penalty; or
- (4) removal.

The decision of the Board must be certified in writing and a copy delivered to the Chief of Police as soon as practicable, but in no event later than ten days after the decision of the Board of Rights. Whenever a Board of Rights prescribes a penalty of suspension or removal and the member is not currently relieved from duty, the Chief may temporarily relieve the member from duty pending execution of the order.

For purposes of this section, demotion in rank shall mean reduction in civil service classification. The provisions of this section shall not apply to reductions in pay grade or similar personnel actions caused by reassignment, deselection from bonused positions, and the like. Such personnel actions shall be administered under policies adopted by the department.

(o) **Personnel History and Records.** The departmental personnel history and records of the accused shall be available to the Board of Rights only if the accused has been found guilty of any charge upon which the member was heard or tried by the Board of Rights, and then only for the purpose of determining a proper penalty. At the penalty stage, the Board may consider the entire departmental personnel history and record of the accused which shall include, among other things, information concerning personnel complaints against the accused that were sustained and information derived from complaints against the accused that were not resolved, to the extent and in the manner allowed by department policy except that the medical package of the accused shall not be considered by the Board with regard to penalty unless such information is relevant to a charge as to which there was a finding of guilty. In prescribing the penalty, the Board shall look to the nature and gravity of the offense of which the member has been found guilty and may at its discretion review the departmental personnel history and record of the member. No item or entry in the record may be considered by the Board except in the presence of the member and only where the member has been given a fair and reasonable opportunity to explain any item or entry unless the member has failed or refused to be present. Personnel records introduced at or considered by the Board are confidential except for any document or information from a document that was publicly disclosed during the hearing.

(p) **Imposition; Reduction of Penalty.** Within ten days of delivery of a certified copy of the decision of a Board Rights to the Chief of Police, the Chief shall either uphold the recommendation of the Board of Rights or may, at his or her discretion, impose a penalty less severe than that ordered by the Board Rights, but may not impose a greater penalty. In the case of a demotion, suspension, demotion and suspension, or removal, the Chief shall cause a copy of the notice of the penalty to be served upon the member and shall file a statement of this action with the Board of Police Commissioners within five days.

(q) **Effective Date of Penalty.** A removal prescribed by the Board of Rights, or by the Chief of Police if no hearing is had before a Board of Rights, shall relate back to and be effective as of the date of the relief from duty without pay pending hearing before and decision by the Board; however, where a final decision has been made by the Chief of Police prior to the end of the 30 day period referred to in subsection (b)(1), the removal shall be effective immediately. When there has been no relief from duty, the removal shall be effective upon service of the order. The effective date of any suspension and/or demotion prescribed by the Board of Rights, or by the Chief of Police if no hearing is had before a Board of Rights, shall be determined by policies adopted by the department; provided, that in case of suspension where there has been a temporary relief from duty, the 30 day period referred to subsection (b)(1) or any portion thereof in which the member received compensation shall not be counted as part of the suspension. Nothing in this section shall preclude the imposition of a suspension without pay when a final decision is made prior to the end of the 30 day period. Practices in effect on the effective date of the most recent amendment to this section shall remain in effect until the adoption of any modification to the policies.

(r) **Calendar Days.** Except as otherwise provided in this section, all time periods, including those of limitation, shall be calculated in calendar days. When the last day of any such period falls on a weekend or City holiday, the period shall extend to the next business day.

(s) **Not Guilty.** In any case of a finding of Not Guilty of the accused after a hearing before a Board of Rights, the finding of Not Guilty shall be without prejudice to the member.

(t) **Rehearing.** At any time within three years after the effective date of removal, the removed member may file a request with the Chief of Police to be reheard or to be heard on the cause of the member's removal, together with a supporting affidavit setting forth in clear and concise language the reasons or grounds for a hearing or rehearing. The Chief shall consider and make a decision on the request and affidavit within 30 days after filing. If the Chief determines that good reason or cause exists for a hearing or rehearing, the Chief shall, without unnecessary delay, cause a Board of Rights to be constituted for the purpose of hearing and deciding upon the matter. The Board of Rights shall, at the conclusion of the hearing, render and certify its findings (independent of any previous findings by any other Board of Rights, or any other court, Board, or other tribunal, or any investigation or report of or discretion exercised by the Chief in such cases where no hearing was had before a Board of Rights) based only upon the evidence presented at the hearing. The Board shall make and certify its decision and order in writing and deliver a copy to the Chief. The Chief shall proceed in the same manner as provided for above after decision by a Board of Rights.

(u) **Modification of Penalty.** Following the filing of the notice of penalty with the Board of Police Commissioners as required in subsection (p), the Chief of Police may correct a technical error, or where there is good cause shown, may reduce a penalty, including restoration of a person following removal. The provisions of subsection (w) shall not apply to this subsection; however, the member shall receive full compensation for any penalty or

portion thereof already served which has been reduced or nullified by the Chief of Police. The Chief of Police shall file a copy of the modified order or statement of his decision with the Board of Police Commissioners.

(v) **Other Legal Rights.** This section shall not be construed to affect any rights a member may have to assert other legal rights or remedies in relation to his or her office or position or to the compensation attached thereto, or to appeal to or be heard or tried by any court or other tribunal of competent jurisdiction.

(w) **Restoration to Duty.** A member restored to duty after removal or temporary relief from duty, or whose suspension or demotion has been overturned in whole or in part, shall be entitled to receive full compensation from the City as if the nullified penal action had not been taken; except that such compensation shall not exceed one year's salary unless otherwise required by law.

(x) **Decisions Based on Evidence.** Members of a Board of Rights are to make decisions based solely on the evidence before them.

(y) **Public Records.** The order referred to in subsection (d) and the notice of the penalty referred to in subsection (p) are considered to be a public record at the time of filing of such documents with the Board of Police Commissioners. The Chief of Police or his or her designee shall be the custodian of public records referred to in this section.

(z) **Effects of Amending This Section.** This section shall not apply to the discipline of any member who was relieved from duty or who appealed a demotion or suspension or both to a Board of Rights prior to its effective date. Matters arising out of such relief from duty, demotion or suspension shall be adjudicated in accordance with applicable prior Charter provisions.

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